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22 BARRY BONDS

23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA
25 SAN FRANCISCO DIVISION

26 UNITED STATES OF AMERICA,)	Case No.: CR 07-0732 SI
)	
27 Plaintiffs,)	MOTION IN LIMINE NO. 5
)	
28 vs.)	MOTION OF DEFENDANT BARRY L.
)	BONDS TO PROHIBIT EXPERT
29 BARRY LAMAR BONDS,)	OPINION TESTIMONY WHICH WAS
)	NOT DISCLOSED TO THE DEFENSE
30 Defendants)	PURSUANT TO RULE 16(a)(1)(G),
)	Federal Rules of Criminal Procedure

31 Date: March 1, 2011
32 Hon: Susan Illston

1 **I. INTRODUCTION.**

2 This Motion seeks an Order that the Government be prohibited from offering expert
3 testimony which was not disclosed to the defense pursuant to Rule 16(a)(1)(G), Federal Rules of
4 Criminal Procedure.

5 **II. FACTS.**

6 On January 20, 2009, in response to Defendant's request, the Government disclosed its
7 expert witnesses, Dr. Don H. Catlin and Dr. Larry D. Bowers. In accordance with Rule
8 16(a)(1)(G), FRCP, the Government's disclosure set forth the qualification of Drs. Catlin and
9 Bowers, and provided a written summary of their expert testimony. A copy of the Government's
10 Disclosure is attached to this Motion as Exhibit "A".¹ Other than declarations filed by Dr. Bowers
11 on January 26, 2009, and February 13, 2009, the Government has not supplied additional evidence
12 or material from either of its experts since the Initial Disclosure of January 20, 2009. See Rule
13 16(c), FRCP.

14 **III. ARGUMENT**

15 Rule 16(d)(2)(C) provides that in the event of a party's noncompliance with its disclosure
16 obligation under rule 16, the Court may "prohibit that party from introducing the undisclosed
17 evidence ..."

18 The Government has disclosed many opinions of Drs. Catlin and Bowers. Defendant
19 believes that some of these opinions are inadmissible because they are irrelevant, unduly
20 prejudicial, or otherwise inadmissible under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509
21 U.S. 579 (1993). Defendant may object to inadmissible opinions through motions *in limine* or
22 contemporaneous objections at trial. The present motion, however, simply seeks to prohibit
23 opinions which were not previously disclosed under Rule 16(a)(1)(G). The Government has given
24 no indication that it intends to offer any such opinions at trial. This Motion is made in an
25

26
27 ¹ The Disclosure also incorporated the Grand Jury testimony of Drs. Catlin and Bowers,
28 which is not attached to this Motion.

1 abundance of caution because an attempt by the Government to offer previously undisclosed expert
2 testimony would be highly prejudicial to the defense.

3 **IV. CONCLUSION.**

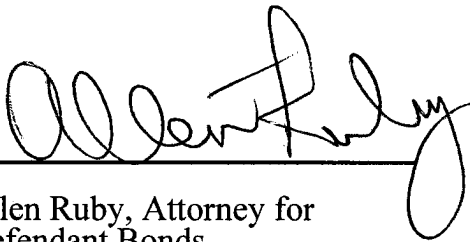
4 Defendant respectfully requests an Order that the Government be prohibited from
5 introducing expert opinion testimony not previously disclosed under Rule 16(a)(1)(G) or 16(c).

6 Respectfully submitted,

7 DATED: February 14, 2011

Skadden, Arps, Slate, Meagher & Flom LLP

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Allen Ruby, Attorney for
Defendant Bonds